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No. 71-723

Supreme Court, U.S.
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In the Supreme Court of the United States

OCTOBER TERM, 1971

HOWARD J. MEISTER,

Petitioner,

vs.

LeROY L. DALTON,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WISCONSIN

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Howard J. Meister petitions for a Writ of Certiorari to review a decision of the Supreme Court of Wisconsin entered on June 29, 1971, and the Wisconsin Supreme Court's denial of petitioner's motion for rehearing which was entered on September 8, 1971.

OPINION BELOW

The opinion of the Wisconsin Supreme Court (Appendix A, *infra* p. App. 1) is reported at 52 Wis. 2d 173, 188 N.W. 2d 494 (1971).

JURISDICTION

The order of the Wisconsin Supreme Court denying petitioner's motion for rehearing was entered on September 8, 1971. The jurisdiction of this Court is involved under 28 U.S. Code 1257(3).

STATUTE INVOLVED

Amendment to the United States Constitution, Article 1

Congress shall make no law respecting the establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

QUESTION PRESENTED

Whether an award of punitive damages against a private citizen in an action for the libel and slander of a public official is a violation of freedom of speech as protected by the First Amendment to the United States Constitution.

STATEMENT

The plaintiff in the action below, LeRoy L. Dalton, a prominent public official, to-wit: head of the criminal investigation division of the Wisconsin Attorney General's Office, brought suit for damages for defamation of character against the defendant, petitioner herein, Howard J. Meister. The action was based upon the alleged defamatory statements referring to Dalton as a ringleader, "gestapo leader" and as having illegally constituted the Grand Jury that had indicted Meister on bribery charges. These statements were orally and by written press release, disseminated to the public following the dismissal of the criminal bribery charges brought against Meister by the aforementioned indictment.

The jury, in the trial court, awarded the plaintiff the sum of Seventy Five Thousand ($75,000) Dollars in compensatory damages and Two Hundred Thousand ($200,000) Dollars in punitive damages. The trial court affirmed the award of compensatory damages, but thereafter applied the rule in *Powers* v. *All State Insurance Company*, 10 Wis. 2d 78, 102 N.W. 2d 393 (1960), and reduced the award of punitive damages to Seventy Five Thousand ($75,000) Dollars.

The Wisconsin Supreme Court affirmed the decision of the trial court and denied a motion for review.

REASONS FOR GRANTING THE WRIT

The Wisconsin Supreme Court, in deciding the issues raised by this petition, has placed a "chilling effect" upon the First Amendment rights of ordinary citizens to openly and freely criticize a public officer in the performance of his official duties. For while it is generally conceded that in the area of intentional torts that punitive damages are proper where the defendant's actions have been clearly motivated by malice or vindictive purpose, it is Meister's position that such an award of punitive damages is inconsistent with First Amendment rights where the plaintiff is a public official.

In 1964, this Court stated in *New York Times* v. *Sullivan*, 376 U.S. 254, 84 Sup. Ct. 710 (1964), that the test for recovery in an action for libel and slander where the plaintiff is a "Public Official" is

> "... Actual Malice—that the statement was made with actual knowledge that it is false, or with reckless disregard as to whether it is true or false."

The "Times" rule developed in the law because in this limited area of damages, the public interest was deemed to have outweighed the protection of private reputation in favor of free discussion. *Garrison* v. *State of Louisiana*, 379 U.S. 64, 85 Sup. Ct. 209 (1964). Therefore, while the "Times" rule delineates the objective standard for recovery of compensatory damages, there is no stricter standard for an award of exemplary damages.

Furthermore, while the purpose of compensatory damages is to make whole an injured party, the purposes of punitive damages are to punish, and to serve as a deterrent to similar future actions by the populace. Therefore, as

stated by Justice Harland in *Rosenbloom* v. *Metromedia, Inc.*, 403 U.S. 29, 91 Sup. Ct. 7811 (1971):

> "... such damage awards are windfalls. They are, in essence, private fines levied for purposes that may be wholly unrelated to the circumstances of the actual litigant."

Justice Hansen, in his dissent in the "Meister" decision, states at page 194 that:

> "Nowhere, in any of the opinions in 'New York Times' or 'Metromedia' is there any difference as to the goal: assuring that first amendment rights to free speech and press will somehow be protected against invasion by libel suits brought by public officials against critics in the performance of their duties."

Furthermore, Mr. Justice Black, in his concurring opinion in the "Times" case posits that while the majority of the courts (including the Wisconsin Supreme Court) believe that the requirement of actual proven malice is sufficient to overcome any constitutional impediment, this requirement is an illusory protection as he says at page 293, that:

> "Malice ... is an elusive, abstract concept, hard to prove and hard to disprove. The requirement that malice be proved provides at best an evanescent protection for the right critically to discuss public affairs ..."

The result of the adoption of the rule that only compensatory damages should be awarded in a case of this nature would be as stated in "Metromedia" to compensate a plaintiff "for ... (his) real injuries, "but ... will not be, however, assuaged far beyond ... his wounds."

This court should express itself to clarify this issue which has been only tangentially, and not squarely, raised, either in the "Times" or "Metromedia" cases.

CONCLUSION

This case presents the substantial question of whether an award of punitive damages against a private citizen in an action for the libel and slander of a public official in performance of his official duties is a violation of freedom of speech and has imposed a "chilling effect" upon his individual liberty as protected by the First Amendment to the United States Constitution. The Petitioner in this case believes his constitutional right of free speech has been subverted. An award of punitive damages in this type of action serves only as a cudgel with which to suppress a right, a right the exercise of which is one of the cornerstones of this Nation's creeds.

For the reasons stated, it is respectfully urged that the Petition for a Writ of Certiorari be granted.

Respectfully submitted,

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